



BASIC PRINCIPLES OF THE LAW OF WAR AND THEIR TARGETING IMPLICATIONS

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The law of war (LOW) rests on five fundamental principles that are inherent to all targeting decisions: military necessity, unnecessary suffering, proportionality, distinction (discrimination), and honor (chivalry).

Military Necessity. *Is this action (e.g., attack) permitted under applicable international law and required to quickly and efficiently defeat the enemy?* A separate, but intimately related, question is whether the target of the attack is a valid military objective. The meaning of the term “military objective” in this context comes from Article 52 of Additional Protocol I to the Geneva Convention that describes military objectives as “[T]hose objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” Though the United States is not a signatory to the Additional Protocol I, it views this definition as an accurate restatement of customary international law.³⁸ The principle of military necessity legally justifies attacks against targets that are valid military objectives because such attacks are recognized as indispensable to securing the rapid submission of the enemy. An attack upon other than a valid military objective would violate the principle of distinction, be impermissible under international law, and therefore not justifiable as a military necessity.

For example, a residential home does not usually make an effective contribution to military action so is not usually a valid military target. However, a residence may become a valid military target if an adversary is using it for military purposes (such as a military command post, a fighting position, etc.). In that case, the purpose or nature of the objective has been changed by the adversary’s actions and if a definite military advantage will be achieved through targeting the residence then it may be attacked.

Unnecessary Suffering (Humanity). *Will the use of a particular weapon for its normal or expected use cause unnecessary suffering?* This principle is based in the Hague Conventions restrictions against using arms, projectiles, or materials calculated to

³⁸ The word “objective” as used above should not be confused with the definition “objective” in JP 5-0: “The clearly defined, decisive, and attainable goal- towards which every—operation is directed.”

cause suffering or injury manifestly disproportionate to the military advantage realized by the use of the weapon for legitimate military purposes. All weapons in the US inventory are permissible for use unless otherwise restricted by higher authority for operational reasons. These weapons have been reviewed to determine if they comply with the LOW and have been determined not to cause unnecessary suffering when used in the manner in which they were designed. This principle also prohibits using an otherwise lawful weapon in a manner that causes unnecessary suffering.

An example of causing unnecessary suffering would be to modify munitions to disperse glass projectiles to complicate providing medical treatment to the wounded. The bottom line is to use the weapon/munitions as they are designed.

Proportionality. *Does the military advantage to be gained from striking a target outweigh the anticipated incidental civilian loss of life and property if this target is struck?* This requires the expected loss of civilian life and damage to civilian property incidental to attack not be excessive in relation to the concrete and direct military advantage anticipated from striking the target. Planners and commanders should weigh the expected military advantages to be gained from affecting a target against the incidental loss or injury to civilians and the damage or destruction of civilian property. The anticipated military advantage refers to the advantage from those actions considered as a whole, and not only from isolated or particular actions. A “military advantage” is not just a tactical gain, but can span the spectrum of [tactical](#), [operational](#) or [strategic](#) levels.

For example, an armored vehicle used in combat is located at a school. The vehicle is a valid target. However, destroying the vehicle with certain types of munitions may place lives and safety of nearby non-combatants in jeopardy. The potential for injury to non-combatants should help guide the choice of lethal and/or nonlethal capabilities chosen against the vehicle.

Distinction (Discrimination). *Have we distinguished between combatants and non-combatants; have we distinguished between military objectives and protected property or places?* This principle, based on customary international law, requires parties to direct operations only against combatants and military objectives. It prohibits indiscriminate attacks which are attacks not directed at specific military objectives, those that employ a method or means of combat that cannot be directed at a specific military objective and those that employ a method or means of combat the effects of which cannot be limited.

For example: Dropping munitions—guided or not—in a residential area without regard to whether there are combatants or military objectives in the area simply because there may be adversary forces there would be an indiscriminate attack. The use of gravity-guided munitions (non-precision) against enemy combatants or military objectives is not of itself an indiscriminate attack.

Honor. *Is this a means of warfare or a type of conduct that would be unfair or constitute a breach of trust with the enemy?* Honor (also called chivalry) demands a certain amount of fairness and mutual respect between adversaries. Parties to a conflict must

accept that their right to adopt means of injuring each other is not unlimited, they must refrain from taking advantage of the adversary's adherence to the law by falsely claiming the law's protections, and they must recognize that they are members of a common profession that fights not out of personal hostility but on behalf of their respective States.
